

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CONTENT AGGREGATION
SOLUTIONS LLC, a Texas limited
liability company,

Plaintiff,

v.

BLU PRODUCTS, INC.

Defendant.

Case No.: 3:16-cv-00527-BEN-KSC

**ORDER GRANTING MOTION TO
DISMISS**

CONTENT AGGREGATION
SOLUTIONS LLC, a Texas limited
liability company,

Plaintiff,

v.

HUAWEI TECHNOLOGIES CO., LTD.,
a China corporation, and HUAWEI
TECHNOLOGIES (USA), CO., LTD., a
Delaware corporation.

Defendants.

Case No.: 3:16-cv-00528-BEN-KSC

**ORDER GRANTING MOTION TO
DISMISS**

1 CONTENT AGGREGATION 2 SOLUTIONS LLC, a Texas limited 3 liability company, 4 Plaintiff, 5 v. 6 LG ELECTRONICS, INC., a South 7 Korean corporation, and LG 8 ELECTRONICS (USA), INC., a 9 Delaware corporation. 10 Defendants.	Case No.: 3:16-cv-00529-BEN-KSC ORDER GRANTING MOTION TO DISMISS
9 CONTENT AGGREGATION 10 SOLUTIONS LLC, a Texas limited 11 liability company, 12 Plaintiff, 13 v. 14 SHARP CORPORATION, a Japan 15 corporation, and SHARP ELECTRONICS 16 CORPORATION, a New York 17 corporation. 18 Defendants.	Case No.: 3:16-cv-00530-BEN-KSC ORDER GRANTING MOTION TO DISMISS
18 CONTENT AGGREGATION 19 SOLUTIONS LLC, a Texas limited 20 liability company, 21 Plaintiff, 22 v. 23 SONY MOBILE COMMUNICATIONS, 24 INC., a Japan corporation, and SONY 25 MOBILE COMMUNICATIONS (USA), 26 INC., a Delaware corporation. 27 Defendants.	Case No.: 3:16-cv-00531-BEN-KSC ORDER GRANTING MOTION TO DISMISS

1 CONTENT AGGREGATION 2 SOLUTIONS LLC, a Texas limited 3 liability company, 4 Plaintiff, 5 v. 6 ZTE CORPORATION, a China 7 corporation, and ZTE (USA), INC., a New 8 Jersey corporation. 9 Defendants.	Case No.: 3:16-cv-00533-BEN-KSC 10 ORDER GRANTING MOTION TO 11 DISMISS
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10 This order addresses motions to dismiss filed or joined in six related patent cases
11 filed by Plaintiff Content Aggregation Solutions, LLC (“CAS”). Plaintiff has filed
12 identical complaints in each of the six cases, alleging direct infringement of claims 1, 15,
13 and 16 of U.S. Patent No. 8,756,155 (“the ’155 patent”). Defendant ZTE (USA), Inc.
14 (“ZTE”) was the first to move to dismiss the complaint.¹ Defendants Huawei
15 Technologies USA, Inc. (“Huawei”), LG Electronics, Inc. and LG Electronics U.S.A.,
16 Inc. (collectively, “LGE”), and Sony Mobile Communications (USA), Inc. (“Sony”)
17 (collectively, the “Joint Motion Defendants”²) then filed identical motions to dismiss.
18 Defendants Blu Products, Inc. and Sharp Corporation and Sharp Electronics Corporation
19 (collectively, “Sharp”) joined the motions to dismiss filed by the Joint Motion
20 Defendants. The motions are all brought on the same grounds: They argue that the
21 asserted patent is invalid for lacking eligible subject matter under 35 U.S.C. § 101 and

22
23
24 ¹ Plaintiff voluntarily dismissed Defendant ZTE Corporation on April 25, 2016. ZTE
25 (USA), Inc. is the only remaining defendant in case number 3:16-cv-00533.

26 ² To be clear, Huawei, LGE, and Sony are not co-defendants. CAS has filed a separate
27 action against each. However, they are represented by the same counsel, which filed
28 identical motions to dismiss in each case. Plaintiff referred to Huawei, LGE, and Sony as
the Joint Motion Defendants in its opposition. For the sake of clarity and efficiency, the
Court adopts that moniker here.

1 therefore CAS's complaint fails to state a claim and must be dismissed. Plaintiff CAS
 2 filed an opposition that addressed the ZTE and Joint Motion Defendants' motions
 3 simultaneously.

4 Because the same issues are presented, in the interests of judicial efficiency, the
 5 Court will address the motions to dismiss in one omnibus order. As explained below, the
 6 Court finds that the patent claims are directed to ineligible subject matter and, thus, are
 7 invalid under § 101. The motions to dismiss are **GRANTED**.

8 **BACKGROUND³**

9 CAS is a Texas limited liability company with a principal place of business in
 10 Dallas, Texas. (Compl. ¶ 1, ECF No. 1.) CAS is the owner of the '155 patent. (*Id.* ¶ 9.)
 11 The '155 patent is entitled "Web Based Communication of Information with
 12 Reconfigurable Format." (*Id.* Ex. A [hereinafter '155 patent].) The '155 patent "teaches
 13 a system of using an Internet-aware service to form a conduit between the Internet and
 14 another device which may be a hand-held device or any other thin client, or even a
 15 regular client." ('155 patent, Summary of Invention, 1:56-59.)

16 According to the Complaint, the claims of the '155 patent "are addressed, among
 17 other things, to the technical problem of how to efficiently and practically assemble a
 18 combination of different information from different sources on the Internet and return
 19 that information to a handheld device, such as a Smartphone, that on its own would have
 20 been incapable of assembling the information in a practical and useful way without
 21 modification of the different sources." (Compl. ¶ 12.) "The claims additionally reduce
 22 technical complexity and improve efficiency in the handheld device by allowing the
 23 aggregation to take place upon the selection of at least one indicator with a single

24
 25 ³ All citations are to the docket in *Content Aggregation Solutions LLC v. ZTE*
 26 *Corporation et al.*, No. 3:16-cv-00533. Identical complaints have been filed in each of
 27 the six related cases. The Court is not making any findings of fact, but rather
 28 summarizing the relevant allegations of the complaint for purposes of evaluating
 Defendant's motion.

1 actuation.” (*Id.*) Plaintiff asserts that the claimed invention is different than and superior
 2 to prior technology, and does not preempt commerce on the Internet or the use of
 3 handheld devices on the Internet. (*Id.* ¶¶ 13-15.)

4 Plaintiff pleads one count of direct patent infringement under 35 U.S.C. § 271(a).
 5 Plaintiff alleges that Defendants “have infringed at least claims 1, 15 and 16 of the ’155
 6 patent by using, selling, and/or offering to sell, within the United States, and/or by
 7 importing into the United States, products, including but not limited to, smartphones
 8 and/or tablets that include Android operating systems with Google Now Cards
 9 functionality.” (*Id.* ¶ 19.) As the patent claim language is important, it is repeated here.

10 Claim 1 claims:

11 1. A computing device, comprising:

12 A handheld housing and processor and display, said display displaying a
 13 plurality of different indicators, and wherein at least one of said indicators,
 14 when selected with a single actuation, selecting execution of a pre-stored
 15 sequence of actions based on said single actuation that interface with a
 16 remote internet site, takes some action on the remote internet site, and
 17 returns information from the internet site, all based on said single actuation,
 18 wherein said sequence accesses a plurality of different Internet sites, and
 19 said information is based on said plurality of Internet sites.

20 (’155 patent, cl. 1, 15:64-16:8.)

21 Claims 15 and 16 are dependent claims, referring to claim 1. Claim 15 recites:

22 15. A device as in claim 1, further comprising a handheld housing and
 23 wherein said processor and display are housed by said handheld housing.

24 (Id., cl. 15, 17:24-26.) Claim 16 recites:

25 16. A device as in claim 1, wherein said processor and display are battery
 26 driven.

27 (Id., cl. 16, 17:27-28.)

28 The patent’s specification explains that in one embodiment, “a client which is
 29 capable of interactive communication, and more preferably a hand-held device, may be
 30 used to obtain specified kinds of information from the Internet. Requests are sent to a

1 service. The service can be any computer which is capable of receiving requests,
 2 reformatting then [sic] into a specified form that is required by a web server, sending it,
 3 receiving the response, and reformatting that response.” (’155 patent, 1:60-66.) In
 4 another embodiment, “the hand-held device may include the user’s personal information,
 5 and which can be used to allow identification, e.g. login, to a specified Internet site.”
 6 (*Id.*, 2:8-10.) “Another embodiment describes effectively do-it-yourself Internet, where a
 7 service is used to rearrange the content and the information in an Internet page, and to
 8 display the new information to the user.” (*Id.*, 2:11-14.)

9 **LEGAL STANDARDS**

10 **I. Motions to Dismiss**

11 “[A] complaint must contain sufficient factual matter, accepted as true, to state a
 12 claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78
 13 (2009). “A claim is facially plausible ‘when the plaintiff pleads factual content that
 14 allows the court to draw the reasonable inference that the defendant is liable for the
 15 misconduct alleged.’” *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting
 16 *Iqbal*, 556 U.S. at 678). When considering a Rule 12(b)(6) motion, the court must
 17 “accept as true facts alleged and draw inferences from them in the light most favorable to
 18 the plaintiff.” *Stacy v. Rederite Otto Danielsen*, 609 F.3d 1033, 1035 (9th Cir. 2010)
 19 (citing *Barker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009)).
 20 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
 21 statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

22 **II. Patentable Subject Matter Under 35 U.S.C. § 101**

23 Subject matter eligibility under 35 U.S.C. § 101 is a question of law that is
 24 regularly decided on the pleadings. *See In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d
 25 607, 610, 615 (Fed. Cir. 2016) (affirming dismissal under Rule 12(b)(6)); *OIP Techs.,*
 26 *Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015) (affirming grant of
 27 judgment on the pleadings to defendant); *Content Extraction & Transmission LLC v.*
 28 *Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1343 (Fed. Cir. 2014) (affirming dismissal under

1 Rule 12(b)(6)). Section 101 defines the subject matter eligible for patents as “any new
 2 and useful process, machine, manufacture, or composition of matter, or any new and
 3 useful improvement thereof,” subject to limitations in the Patent Act and judicially-
 4 created exceptions. 35 U.S.C. § 101. The Supreme Court has held that “[l]aws of nature,
 5 natural phenomena, and abstract ideas are not patentable.” *Ass’n of Molecular Pathology*
 6 v. *Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013). “The concepts covered by these
 7 exceptions are ‘part of the storehouse of knowledge of all men . . . free to all men and
 8 reserved exclusively to none.’” *Bilski v. Kappos*, 561 U.S. 593, 602 (2010) (internal
 9 citation omitted). “[T]he underlying concept is that ‘patent law not inhibit further
 10 discovery by improperly tying up the future use of these building blocks of human
 11 ingenuity.’” *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352-53 (Fed. Cir. 2014)
 12 (quoting *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014)). This case
 13 involves the abstract idea exception.

14 Under the Supreme Court’s two-step analytical framework for analyzing whether
 15 claims are patent eligible, the court “first determine[s] whether a claim is ‘directed to’ a
 16 patent-ineligible abstract idea.” *Content Extraction*, 776 F.3d at 1346 (quoting *Alice*, 134
 17 S. Ct. at 2355). If it is an abstract idea, the court moves to the second step. In step two,
 18 the court considers the elements of each claim both individually and “as an ordered
 19 combination” to determine whether the additional elements “transform the nature of the
 20 claim” into a patent-eligible application. *Alice*, 134 S. Ct. at 2355. The Supreme Court
 21 has described the second step as the search for an “inventive concept”—that is, “an
 22 element or combination of elements that is ‘sufficient to ensure that the patent in practice
 23 amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.*
 24 (internal citation omitted).

25 DISCUSSION

26 Plaintiff’s complaints allege that “at least claims 1, 15, and 16” are directly
 27 infringed. (Compl. ¶ 19.) Claim 1 is representative of claims 15 and 16, which are
 28 dependent on claim 1 and only add tangible component limitations to the patent.

1 As explained below, the Court finds that the claims are directed to an abstract idea
 2 that does not contain an inventive concept sufficient to transform them into a patent-
 3 eligible application. Therefore, the claims of the '155 patent are patent-ineligible.

4 **I. Alice Step One: Abstract Idea**

5 The first step of the *Alice* inquiry requires the court to look at the “focus” of the
 6 claims and their “character as a whole” to determine whether the claims are “drawn to the
 7 concept of” an abstract idea. *See Alice*, 134 S. Ct. at 2356; *Elec. Power Grp., LLC v.*
 8 *Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). “The Supreme Court has not
 9 delimited the precise contours of the ‘abstract ideas’ category.” *Content Extraction*, 776
 10 F.3d at 1346. As a result, the Supreme Court and Federal Circuit “have found it
 11 sufficient to compare claims at issue to those claims already found to be directed to an
 12 abstract idea in previous cases.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334
 13 (Fed Cir. 2016). In addition to comparing claims to prior precedents, “courts considering
 14 computer-implemented inventions have taken varied approaches to determining whether
 15 particular claims are directed to an abstract idea. For example, courts have considered
 16 whether the claims purport to ‘improve the functioning of the computer itself,’ which
 17 may suggest that the claims are not abstract, or instead whether ‘computers are invoked
 18 merely as a tool’ to carry out an abstract process.” *Papst Licensing GmbH & Co. KG v.*
 19 *Xilinx Inc.*, Nos. 16-CV-00925-LHK, 16-CV-00926-LHK, 2016 WL 3196657, at *10
 20 (N.D. Cal. June 9, 2016) (quoting *Alice*, 134 S. Ct. at 2359 and *Enfish*, 822 F.3d at 1336,
 21 respectively). Another useful tool to determine whether claims are directed to an abstract
 22 idea is “whether the claims are, in essence, directed to a mental process or a process that
 23 could be done with pen and paper.” *Id.* (citing cases). Where the steps of the claim could
 24 be performed by a human being without a computer, the claim is likely directed to an
 25 abstract idea. *Id.*

26 Defendant ZTE argues that the claims are directed to the abstract concept of
 27 retrieving and compiling data. The Joint Motion Defendants contend that the asserted
 28 claims are directed to the abstract idea of retrieving information from multiple sources

1 based on a single action. They support these arguments with citations to Federal Circuit
 2 authority holding that gathering, transmitting, and organizing information are abstract
 3 ideas. *See, e.g., Content Extraction*, 776 F.3d at 1347 (“The concept of data collection,
 4 recognition, and storage is undisputedly well-known. Indeed, humans have always
 5 performed these functions.”); *Cyberfone Sys., LLC v. CNN Interactive Grp.*, 558 F.
 6 App’x 988, 992 (Fed. Cir. 2014) (“Here, the well-known concept of categorical data
 7 storage, *i.e.*, the idea of collecting information in classified form, then separating and
 8 transmitting that information according to its classification, is an abstract idea that is not
 9 patent-eligible.”).

10 In opposition, CAS claims that the Defendants are stripping away the language of
 11 the claims to read a few words in isolation. CAS relies on the Federal Circuit’s recent
 12 decision in *Enfish* to argue that the claims are not directed to an abstract idea. In *Enfish*,
 13 the Federal Circuit found that it was relevant to ask “whether the focus of the claims is on
 14 the specific asserted improvement in computer capabilities . . . or, instead, on a process
 15 that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.”
 16 *Enfish*, 822 F.3d at 1335-36. There, the patent claimed a “data storage and retrieval
 17 system for a computer memory.” *Id.* at 1336. The Federal Circuit held that the claims
 18 were *not* directed to the abstract idea of “storing, organizing, and retrieving memory in a
 19 logical table.” *Id.* at 1337. Rather, the claims were “specifically directed to a self-
 20 referential table for a computer database” requiring a four-step algorithm, *id.*, which was
 21 a “specific improvement to the way computers operate,” *id.* at 1336, and distinct from
 22 existing database structures, *id.* at 1337. The court explained that the relevant claims
 23 were “not simply directed to *any* form of storing tabular data,” *id.* at 1337, and did not
 24 focus “on economic or other tasks for which a computer is used in its ordinary capacity,”
 25 *id.* at 1336.

26 In this case, CAS argues that that the patent claims are like those in *Enfish* because
 27 they focus on improvements to apparatuses (computers and computing devices), not
 28 processes. CAS contends that “[p]rior to the ’155 patent, no computer existed that had

1 the same capabilities as those claimed in the '155 patent.'" (Opp'n at 18.) CAS does not
 2 describe these improved capabilities in its opposition. Rather, CAS states that paragraphs
 3 12 through 17 of its complaints address the specific facts regarding the improvement in
 4 computer capabilities claimed by the patent.

5 CAS's reliance on *Enfish* is not persuasive. CAS focuses on the fact that the patent
 6 claims an apparatus (a "computing device"), rather than a method, and that the patent
 7 claims improve the functioning of the apparatus, making the patent akin to the patent
 8 upheld in *Enfish*. As an initial matter, patent eligibility does not depend on the form of
 9 the claim. *See Alice*, 134 S. Ct. at 2360 (cautioning against "interpreting § 101 in ways
 10 that make patent eligibility depend simply on the draftsman's art"); *Accenture Global
 11 Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1342 (Fed. Cir. 2013)
 12 ("[P]atent eligibility does not depend on the form of the claim, whether computer-
 13 implemented innovations are claimed as a method or a system or a storage medium,
 14 whether implemented in hardware or software. Patent eligibility does not turn on the
 15 ingenuity of the draftsman." (quoting other case)). "The fact that the asserted claims are
 16 apparatus claims, not method claims, does not change the court's analysis. Indeed, if that
 17 were the case, then applying a presumptively different approach to system or apparatus
 18 claims generally would reward precisely the type of clever claim drafting that the
 19 Supreme Court has repeatedly instructed the Court to ignore." *Joao Bock Transaction
 20 Sys., LLC v. Jack Henry & Assocs., Inc.*, 76 F. Supp. 3d 513, 523 (D. Del. 2014) (internal
 21 citations and quotation marks omitted) (apparatus claims held invalid for claiming
 22 ineligible subject matter), *aff'd*, 803 F.3d 667 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct.
 23 1468 (2016).

24 In substance, the claims here are different from those held valid in *Enfish*. The
 25 *Enfish* court emphasized the specificity of the claims, distinguishing them from claims
 26 reciting "generalized steps to be performed on a computer using conventional computer
 27 activity." *Id.* at 1338. The claims at issue were directed "to a specific implementation of
 28 a solution to a problem in the software arts," rather than any general form of achieving

1 the desired result. 822 F.3d at 1337, 1339. “In other words,” the court was “not faced
2 with a situation where general-purpose computer components are added post-hoc to a
3 fundamental economic practice or mathematical equation.” *Id.* Here, this Court is faced
4 with such a situation.

5 The language of the claims and specification make clear that the focus of the
6 claims is on the abstract process of retrieving and transmitting data, and that this process
7 is performed on general-purpose, ordinary computer components. Claim 1, which is
8 representative of the asserted claims, describes a handheld computing device that
9 retrieves information from a remote internet site and returns that information. (’155
10 patent, cl. 1.) Specifically, claim 1 explains that the user takes a single action, which
11 triggers a pre-stored sequence of actions based on that single command, and then “some
12 action” occurs on a remote Internet site, followed by the return of information from the
13 Internet site. (’155 patent, cl. 1.) But the claim language is silent as to how to actually
14 achieve the collection and transmission of information. There are no specifics about what
15 those pre-stored sequences of actions are, what action is taken on a remote Internet site,
16 how information is accessed and returned from the Internet site, or what information is
17 returned. There is no detail about how the aim of the patent is to be achieved on the
18 Internet beyond the idea itself. The specification reinforces this conclusion by explaining
19 that the “present application teaches a system of using an Internet-aware service to form a
20 conduit between the Internet and another device.” (’155 patent, 1:56-58.) That is, the
21 device itself “is merely a conduit for the abstract idea.” *In re TLI Commc’ns*, 823. F3.d at
22 612 (finding claims directed to abstract idea where conventional technology used to
23 implement abstract idea of classifying and storing data). Where a claim “contains no
24 restrictions on how the result is accomplished,” but rather is directed to the abstract idea
25 itself, the claim is not directed to patent-eligible subject matter. *Internet Patents Corp. v.*
26 *Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015); *see also Enfish*, 822 F.3d at
27 1337 (when claims are directed to *any* form of achieving desired result, claims are drawn
28 to abstract idea).

1 Further, the patent acknowledges that the process will be performed on generic
 2 computer parts “using conventional computer activity.” *Enfish*, 822 F.3d at 1338. The
 3 process is implemented on a “computing device, comprising a handheld housing and
 4 processor and display.” (’155 patent, cl. 1.) The device claimed “may be a hand-held
 5 device or any other thin client, or even a regular client.” (*Id.* 1:56-59.) “The thin client
 6 communicates as conventional over a channel to a service provider.” (*Id.* 1:2:53-55.)
 7 “The service provider also communicates with a service. . . . The service can be a
 8 conventional Web service or other subscription service, or simply can be an interfacing
 9 program that is running on a computer at the service provider’s location.” (*Id.* 2:57-62.)
 10 “The service provider also includes a connection to the Internet, as conventional for such
 11 service providers, since they conventionally obtain information such as e-mail and Web
 12 content from the Internet.” (*Id.* 2:64-67.) Thus, unlike the claims in *Enfish*, the claims
 13 here recite “generalized steps to be performed on a computer using conventional
 14 computer activity.” *Enfish*, 822 F.3d at 1338.

15 The Federal Circuit has repeatedly held that patent claims focused on collecting
 16 and analyzing information, and “merely presenting the results of abstract processes of
 17 collecting and analyzing information, without more,” are directed to abstract ideas. *Elec.*
 18 *Power Grp.*, 830 F.3d at 1353-54 (citing cases). The asserted claims here are drawn to
 19 this basic concept. The claims focus on the general, abstract processes of collecting,
 20 analyzing, and presenting information, and not a “specific asserted improvement in
 21 computer capabilities.” *Enfish*, 822 F.3d at 1335. The patent claims a process that
 22 humans have long performed, but implements it on a generic Internet-connected device
 23 used in its ordinary capacity. This is not sufficient to be deemed non-abstract. *See In re*
 24 *TLI Commc’ns*, 823 F.3d at 612-13; *Enfish*, 822 F.3d at 1335. Accordingly, the Court
 25 holds that the asserted claims are drawn to an abstract idea under step one of the *Alice*
 26 inquiry.

27 **II. *Alice* Step Two: Inventive Concept**

28 Where, as here, the patent’s claims are directed to an abstract idea, a court must

1 proceed to step two of the *Alice* inquiry to determine whether the claim elements
 2 individually or as an ordered combination transform the abstract idea into a patent-
 3 eligible application of that idea. Defendants contend the patent only adds generic
 4 computer-related limitations that fail to transform the claim into an inventive concept.
 5 Plaintiff counters that certain tangible components in the claims add meaningful
 6 limitations to the patent. CAS points to claim 1's recitation of a handheld housing,
 7 display, and "configuration of the computing device[] to communicate with a plurality of
 8 remote Internet sites after a single actuation," claim 15's refinement of the device
 9 "wherein [the] processor and display are housed by said handheld housing," and claim
 10 16's addition of a battery. Viewing the claims individually and in combination, the
 11 claims do not add an inventive concept.

12 "[T]he transformation of an abstract idea into patent-eligible subject matter
 13 'requires more than simply stating the abstract idea while adding the words apply it.'" "
 14 *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2015) (quoting *Alice*, 134 S. Ct. at 2357). Here, the claims simply implement the abstract idea of retrieving and
 15 transmitting information on the Internet via a generic device. But "generic computer
 16 implementation" does not "transform that abstract idea into a patent-eligible invention."
 17 *Alice*, 134 S. Ct. at 2357. Nor does implementing the abstract idea on the Internet.
 18 *Ultramercial*, 772 F.3d at 716 ("the use of the Internet is not sufficient to save otherwise
 19 abstract claims from ineligibility under § 101").

21 The process outlined in claim 1 "comprises only 'conventional steps, specified at a
 22 high level of generality,' which is insufficient to supply an 'inventive concept.'" "*Id.*
 23 (quoting *Alice*, 134 S. Ct. at 2357). As noted above and explained further here, the
 24 components used to execute the abstract process perform "well-understood, routine,
 25 conventional activities previously known to the industry," which is also insufficient to
 26 add an inventive concept. *Alice*, 134 S. Ct. at 2359. Claim 1 includes a "handheld
 27 housing," but the specification confirms that accessing information from the Internet
 28 through a device with a handheld housing was known and conventional at the time of the

1 patent. ('155 patent, 1:33-36.) Neither the claims nor specification requires any
2 particular features in the handheld housing. Indeed, the handheld housing is not integral
3 to the invention because the specification admits that the device used to implement the
4 abstract process may be a “thin client, or even a regular client.” (*Id.*, 1:59; *see also id.*,
5 8:19-20 (“other clients, including personal computers, may be used”)).) Similarly, the
6 claims also include a “processor” and “display” but neither need any particular capability
7 beyond their ordinary functions. The specification again confirms that the processor and
8 display are generic computer components. (*Id.*, 12:11-13 (“The computer 900 includes a
9 processor 905 which may be a special-purpose processor or may simply operate
10 according to stored instructions.”); *id.*, 8:66-67 (“icons may be provided for programs
11 and other conventional type display functions of a hand-held”)).

12 The claims require “execution of a pre-stored sequence of actions,” that is “based
13 on a single actuation” of a displayed indicator, resulting in “some action” being taken on
14 a remote Internet site and returning information from the Internet site to the device,
15 “wherein said sequence accesses a plurality of different Internet sites, and said
16 information is based on said plurality of Internet sites.” ('155 patent, cl. 1.) In other
17 words, upon a single command, a prestored sequence of actions accesses and returns
18 information based on a plurality of Internet sites. But this likewise does not add an
19 inventive concept. The patent acknowledges that manually accessing and obtaining
20 information from the Internet was already a “routine, conventional activity previously
21 known to the industry.” *Alice*, 134 S. Ct. at 2359. Indeed, as the Joint Motion
22 Defendants note, the “execution of prestored code in response to user input is the most
23 basic and conventional of computing concepts.” (Joint Mot. at 19.) The specification
24 also explains that the “pre-stored sequence of actions” is based on the user’s previous
25 actions, thus simply automating manual activity. (See '155 patent, Abstract (“The scripts
26 can be formed by monitoring the actions of a user and storing their actions in a memory.
27 That sequence of keystrokes can later be used to access the same web site and obtain
28 updated information.”), 3:48-50 (“Also stored within the database is a probability, for the

1 specific user, of what they will want to do. This may be based on the user's previous
 2 actions."); *see also* Joint Mot. at 14 n.4 (citing portions of specification regarding pre-
 3 stored sequence of actions.).) The automation of human activity using conventional
 4 technology is not an inventive concept. *See Content Extraction*, 776 F.3d at 1348.
 5 Finally, the addition of general, physical components in dependent claims 15 and 16 do
 6 not transform the claims into an inventive concept. *In re TLI Commc 'ns*, 823 F.3d at 613
 7 ("It is well-settled that the mere recitation of concrete, tangible components is insufficient
 8 to confer patent eligibility to an otherwise abstract idea.").

9 The Court considers the Federal Circuit's recent decision in *Electric Power Group*,
 10 *LLC v. Alstom S.A.* instructive. There, the court explained:

11 [T]he claims' invocation of computers, networks, and displays does not
 12 transform the claimed subject matter into patent-eligible applications. The
 13 claims at issue do not require any nonconventional computer, network, or
 14 display components, or even a "non-conventional and non-generic
 15 arrangement of known, conventional pieces," but merely call for
 16 performance of the claimed information collection, analysis, and display
 17 functions "on a set of generic computer components" and display devices.
Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC, No. 2015-1763,
 18 2016 WL 3514158, at *6-7 (Fed. Cir. June 27, 2016).

19 Nothing in the claims, understood in light of the specification, requires
 20 anything other than off-the-shelf, conventional computer, network, and
 21 display technology for gathering, sending, and presenting the desired
 22 information. . . . We have repeatedly held that such invocations of computers
 23 and networks that are not even arguably inventive are "insufficient to pass
 24 the test of an inventive concept in the application" of an abstract idea.

25 830 F.3d 1355. This Court finds that the same reasoning applies equally as well in this
 26 case.

27 *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), does not
 28 compel a different result. In *DDR Holdings*, the court found that the claims were patent
 eligible under § 101. "[T]he claimed solution [was] necessarily rooted in computer
 technology in order to overcome a problem specifically arising in the realm of computer

1 networks.” *Id.* at 1257. When a consumer clicks on a third-party advertisement on a host
 2 website, the consumer is directed to an automatically generated hybrid website instead of
 3 being directed to the third-party’s website. *Id.* The hybrid website looks like the host
 4 page, but contains the third-party’s product information associated with the
 5 advertisement. *Id.* This allows the host to retain the consumer rather than losing them to
 6 the third-party’s website. *Id.*

7 The *DDR Holdings* court emphasized, though, that “not all claims purporting to
 8 address Internet-centric challenges are eligible for patent.” *Id.* at 1258. Rather, the
 9 claims at issue recited a specific way to “override[] the routine and conventional
 10 sequence of events ordinarily triggered” on the Internet. *Id.* The claims “specif[ied] how
 11 interactions with the Internet are manipulated to yield a desired result” different from
 12 what would normally occur. *Id.* The claims were *not* directed at “applying a known
 13 business process to the particular technological environment of the Internet.” *Id.* at 1259.

14 Unlike the claims in *DDR Holdings*, the claims here do not override any routine
 15 sequence of events on the Internet. Instead, the claims are directed to implementation of
 16 a known business practice on the specific platform of the Internet through generic steps
 17 using conventional computer components. This is not inventive. *See, e.g., Ultramercial*,
 18 772 F.3d at 716 (narrowing an “abstract idea to a particular technological environment . . .
 19 . is insufficient to save a claim”).

20 Plaintiff tries to make the ’155 patent claims like those in *DDR Holdings*, arguing
 21 that the claims “provide a technological solution to a problem that arises in the computer
 22 context.” (Opp’n at 21.) It points to the allegations in its complaints asserting that the
 23 patent claims devices that “efficiently and practically assemble a combination of different
 24 information from different sources on the Internet and return that information to a
 25 handheld device . . . that on its own would have been incapable of assembling the
 26 information in a practical and useful way without modification.” (Compl. ¶ 12.) The
 27 complaints also state that the claims “reduce technical complexity and improve efficiency
 28 in the handheld device.” (*Id.*) Notwithstanding that such conclusory allegations may be

1 ignored on a motion to dismiss, Federal Circuit authority is clear that “improved speed or
 2 efficiency inherent with applying the abstract concept on a computer” is insufficient to
 3 provide an inventive concept. *Intellectual Ventures I LLC v. Capital One Bank (USA)*,
 4 792 F.3d 1363, 1367 (Fed. Cir. 2015) (citing cases). Moreover, although the
 5 specification mentions problems with viewing “unoptimized” webpages on handheld
 6 devices and implies that the patent solves this problem (’155 patent, 1:31-45), the claims
 7 themselves are silent about how to address this challenge. Rather, the claims describe a
 8 general process of retrieving and returning information from the Internet to a generic
 9 computing device. As already explained, this is not sufficient to supply an inventive
 10 concept.

11 Plaintiff also attaches a declaration from the inventor, Scott C. Harris, that
 12 purportedly addresses “the technological problems and improvements caused by the
 13 invention.” (Opp’n at 21.) However, such a declaration is inappropriate to consider on a
 14 motion to dismiss. On such motions, a court may only consider the well-pleaded
 15 allegations of the complaint, documents incorporated by reference, and judicially noticed
 16 facts. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). The
 17 Harris declaration meets none of these criteria, and thus the Court does not consider it.
 18 *See Rothschild Location Techs. LLC v. Geotab USA, Inc.*, No. 6:15-cv-682, 2016 WL
 19 2847975, at *2 (E.D. Tex. May 16, 2016) (“A court ordinarily does not look beyond the
 20 pleadings in ruling on a 12(b)(6) motion. In particular, when patent claims on their face
 21 are plainly directed to an abstract idea, a court may properly assess patent-eligibility
 22 under § 101 at the pleading stage.” (citing cases)).

23 In conclusion, considering the claim elements individually and as an ordered
 24 combination, the asserted claims do not contain an inventive concept.

25 CONCLUSION

26 For the reasons set forth above, the asserted claims of the ’155 patent are invalid as
 27 patent-ineligible under § 101. The motions to dismiss are **GRANTED**.

28 The only remaining question is whether Plaintiff should be given leave to amend

1 its complaints. The '155 patent has 27 total claims. Plaintiff argues that the 24 claims
2 not specifically asserted in its complaints remain unchallenged and therefore valid.
3 However, where all the claims are "substantially similar and linked to the same abstract
4 idea," a court need not conduct a specific analysis of each claim. *Content Extraction*, 776
5 F.3d at 1348 (affirming dismissal of all claims as patent-ineligible despite district court
6 only analyzing representative claims). Here, independent claim 1 is not only
7 representative of the specifically-asserted dependent claims 15 and 16, it is also
8 representative of all other claims. All of the claims "recite little more than the same
9 abstract idea" of retrieving and transmitting information, with any additional limitations
10 confined to "well-known, routine, and conventional" technology. *Id.* at 1348-49.
11 Moreover, Plaintiff never identified any claims that it believes would not be fairly
12 represented by claim 1. *See id.* at 1348. Therefore, the Court need not address each
13 claim of the patent and, instead, finds all claims of the '155 patent invalid. Leave to
14 amend would be futile because the flaw lies in Plaintiff's patent as a matter of law rather
15 than its pleading.

16 **IT IS SO ORDERED.**

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18 Dated: November 29, 2016

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Hon. Roger T. Benitez
United States District Judge

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